

Pages 1 - 57

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Vince Chhabria, Judge

IN RE:)	
)	
FACEBOOK, INC.,)	
CONSUMER PRIVACY USER)	NO. 3:18-MD-02843-VC
PROFILE LITIGATION)	
)	
)	
<hr/>		
This document relates to:)	
)	
ALL ACTIONS.)	
)	
<hr/>		

San Francisco, California
Thursday, June 9, 2022

TRANSCRIPT OF REMOTE ZOOM VIDEOCONFERENCE PROCEEDINGS

APPEARANCES VIA ZOOM VIDEOCONFERENCE:

For the Plaintiffs:

KELLER ROHRBACK, LLP
1201 Third Avenue
Suite 3200
Seattle, Washington 98101
BY: **DEREK WILLIAM LOESER**
CARI CAMPEN LAUFENBERG
DAVID J. KO
ADELE AILEEN DANIEL
EMMA MARGUERITE WRIGHT
ATTORNEYS AT LAW

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

TRANSCRIPTION SERVICE BY:	Dipti Patel, CET-997
	Liberty Transcripts
	7306 Danwood Drive
	Austin, Texas 78759
	(847) 848-4907

APPEARANCES VIA ZOOM VIDEOCONFERENCE: (CONTINUED)

For the Plaintiffs:

KELLER ROHRBACK, LLP
300 Lakeside Drive, Suite 1000
Oakland, California 94612
BY: BENJAMIN BLYSTAD GOULD
ATTORNEY AT LAW

BLEICHMAR FONTI & AULD LLP
555 12th Street, Suite 1600
Oakland, California 94607
BY: LESLEY ELIZABETH WEAVER
ANNE KATHLEEN DAVIS
MATTHEW SETH MELAMED
ATTORNEYS AT LAW

For the Defendants:

GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
San Francisco, California 94105
BY: ROSEMARIE THERESA RING
ATTORNEY AT LAW

GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, New York 10166
BY: ORIN SNYDER
ATTORNEY AT LAW

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, California 90071
BY: DEBORAH LYNN STEIN
ATTORNEY AT LAW

GIBSON, DUNN & CRUTCHER LLP
2100 McKinney Avenue, Suite 1100
Dallas, Texas 75201
BY: RUSSELL HARRIS FALCONER
ATTORNEY AT LAW

GIBSON, DUNN & CRUTCHER LLP
1881 Page Mill Road
Palo Alto, California 94304
MARTIE KUTSCHER-CLARK
ATTORNEY AT LAW

Thursday - June 9, 2022

2:50 P.M.

P R O C E E D I N G S

---000---

THE CLERK: Now calling Civil Case 18-2843, In re Facebook, Inc. Consumer Privacy User Profile Litigation.

Will counsel please state your appearances for the record starting with the plaintiff?

MR. LOESER: Good afternoon, Your Honor. It's Derek Loeser from Keller Rohrbach, and with me is Cari Laufenberg, David Ko, and also in the room are Emma Wright and Adele (indiscernible) --

THE COURT: Also in the room are who? Sorry, I couldn't -- you were sort of muffled there at the end.

MR. LOESER: Adele Daniel and Emma Wright.

THE COURT: Okay. Hi, everyone.

MR. LOESER: And I see Ben Gould, as well, from Keller Rohrbach.

MS. WEAVER: Good afternoon, Your Honor. Lesley Weaver of Bleichmar Fonti & Auld. And from my firm with me are Anne Davis and Matt Melamed.

THE COURT: Hello.

MS. RING: Good afternoon, Your Honor. Rose Ring from Gibson Dunn. I have here first Sandeep Solanki from Facebook and also with me from Gibson is Orin Snyder, Deb Stein, Marty Clark, and I'm looking all over. What else? Russ Falconer.

THE COURT: Russ Falconer.

1 **MS. RING:** Thank you. A lot of boxes.

2 **THE COURT:** All right. Hello everybody.

3 So let's maybe start with Mr. Loeser, and you can give us a
4 summary of where we are.

5 **MR. LOESER:** Sure. Thank you, Your Honor.

6 And, you know, I heard in an earlier hearing the last four
7 years of being described as the last four wonderful years. And I
8 don't think I could fairly describe the last four years as being
9 wonderful years.

10 The good news is we are making progress. We've taken a lot
11 of depositions. We have a lot more scheduled including of senior
12 management. And we're getting documents that we didn't get
13 before. So that is good news.

14 You could tell from the statements that there's still a
15 number of what plaintiffs view as problems. We understand that
16 Facebook is working hard. It does take a long time to solve a
17 lot of problems that were created over several years of creating
18 those problems. So it's good news that there is some progress,
19 but I do think it's important to highlight some instances where
20 we believe that the problems remains, in some situations the
21 problems have gotten worse.

22 And what we really need and what we really want are some
23 firm deadlines with some consequences. We remain concerned about
24 the schedule. Your Honor had raised a question at the last
25 conference about, you know, at some point what happens if enough

1 time has passed and we still don't have what we need. We have no
2 interest in changing the schedule. We think enough time has
3 passed for these issues, and we'll get what we get and we'll seek
4 the relief that we need to if we don't get what we think we
5 should.

6 The first issue, Your Honor, perhaps should be the shortest.
7 That's ADI. Two orders have been entered by the Court. ADI is
8 still not -- production is still not completed by the defendants.
9 In the latest conversations, the defendants indicated that they
10 would complete their ADI production by June 15th. We think the
11 Court should enter an order requiring completion by that date.

12 We are concerned about --

13 **THE COURT:** Could I ask a question about that?

14 **MR. LOESER:** Yeah.

15 **THE COURT:** I seem to recall that I already issued an order
16 requiring completion of the production of the ADI documents by
17 some prior date, didn't I?

18 **MR. LOESER:** You did, Your Honor. April --

19 **THE COURT:** And before that, didn't Judge Corley issue an
20 order requiring production of the ADI documents by a certain
21 date?

22 And I'm just trying to figure out like what's the point of
23 continuing to issue orders requiring the production of ADI
24 documents by a certain date and then seeing that date passed --
25 pass and then issuing another order requiring production of the

1 ADI documents by that -- by a new date. What is the point of
2 continuing to do that?

3 **MR. LOESER:** Plaintiffs wholeheartedly agree. And there's
4 two points. One point is we still do want the documents.
5 They're very valuable in the case. They're very compelling.
6 And, B, we do think you should issue -- basically, I mean you
7 could issue an order finding them in contempt of the April 27th
8 order if not the order before that.

9 And so another suggestion that I think makes sense would be
10 an order to show cause why Facebook should not be found in
11 contempt of your prior order.

12 We also think that the topic of issue sanctions come up when
13 we seek relief for the prejudicial delay that has occurred here.
14 We do intend to discuss the ADI production along with that. But
15 for immediate purposes, Your Honor, I agree with you that issuing
16 orders just so they can be ignored doesn't do anyone any good.

17 And so the reason why we want the deadline to complete the
18 documents is we really do want the documents, but we do think
19 that Your Honor should enforce the orders that have already been
20 entered and there should be some consequences for Facebook not
21 complying with that.

22 **MS. RING:** Your Honor?

23 **THE COURT:** Okay.

24 **MS. RING:** Your Honor, may I speak to that, please?

25 **THE COURT:** Yeah. Sure. Go ahead.

1 **MS. RING:** Thank you.

2 I realize I think the term you used last time was an uphill
3 battle here, and I feel it. But I have to say this is not being
4 described to you in the way that this has actually unfolded. And
5 this is truly a case of, you know, we -- first of all, Judge
6 Corley's order required the production of ADI documents related
7 to a sample. That production was finished months ago, within a
8 month of her issuing that order.

9 The only two orders that we're talking about now are the two
10 subsequent orders issued by the Special Master. The first was
11 December 20th, and that covered the ADI investigation documents.
12 The second was January 31st, which that's the first order
13 requiring the production of ADI communications in this case. The
14 first one. That was less than two weeks before the February CMC.

15 I see your face, and this is exactly the point. So I
16 realize I'm still relatively new to this, but --

17 **THE COURT:** I mean Judge Corley and the Special Master have
18 been banging their heads against a wall on this ADI issue for I
19 think years now.

20 **MS. RING:** Well, it's not -- so even dating back to Judge
21 Corley's order, which her order, it was a sampling exercise. It
22 had to do with six apps. The order she issued was to produce the
23 documents related to those six apps, which we did. Then the
24 later orders were issued by the Special Master just not even six
25 months ago.

1 And so we have been by the first order -- again, the
2 December order was for the investigation documents, the technical
3 and background reports, the audits, et cetera, the documents
4 showing the investigation, then the ADI communications. The
5 first order requiring production of those was at the end of
6 January. And you did issue then an order --

7 **THE COURT:** What's the date today?

8 **MS. RING:** June --

9 **THE COURT:** Ninth, I think. I think it's June --

10 **MS. RING:** June 9th.

11 But -- okay, but, please, on -- after those two orders
12 issued by March 3rd, Facebook had produced all of the ADI, all of
13 the required ADI investigation documents and communications by
14 March 3rd. And this is truly a case of no good deed goes
15 unpunished.

16 When that order on January 31st, Your Honor, it said all
17 custodians that the parties have identified and collected, past
18 tense. Those custodians were ADI custodians, 26 of them. And
19 the collections were done through August 2019 using search terms,
20 using the app names and Ids.

21 When we were going through the production to comply with
22 that January 31st order, we saw that reading the Special Master's
23 orders which referred to collections that had already happened,
24 there was a whole background here. And the idea was that there
25 were no additional collections so that we could comply with it

1 quickly, which we did.

2 When I saw that, this is after I came on the case, I
3 affirmatively raised this with plaintiffs and said, you know, the
4 collections only went through the August 19th. I'm not sure
5 anyone was aware of that. I want to make you aware of that and
6 seek clarification from the Special Master.

7 Then we had a CMC with you, another one, in March. And we
8 raised this with you, and you said, great, I will do it right now
9 and now it's going to be through the present. And then you
10 ordered that production to be completed by April 27th, which we
11 did. We went back and collected all of the documents up to the
12 present and negotiated new search terms with plaintiffs, new
13 topical search terms with plaintiffs, which included ADI, okay.
14 So they got --

15 **THE COURT:** And I was curious how -- I found that amusing
16 that I guess you all -- I don't know whose fault it was, but you
17 all went back and realized that when you were searching for
18 documents relating to the app developer investigation, you didn't
19 use the term "app developer investigation."

20 **MS. RING:** We used all the app names and numbers. And when
21 you use ADI, you get all the scheduling emails, all the emails
22 that just say, hey, have you heard of ADI. I mean we were trying
23 to do something that, you know, was targeted.

24 And so -- but we raised that. I said -- you know, I went to
25 plaintiffs affirmatively and said, hey, this is what we did, I

1 just want to make -- you know, this is what was done, I should
2 say, to -- they were collected in the past. And plaintiffs said,
3 not surprisingly, no, we'd like to use all new search terms. We
4 said fine.

5 Then we finished that production and on May -- by April 27th
6 as you ordered. When we were talking more, then plaintiffs came
7 back and said, oh you know what, instead of the ADI custodians,
8 we'd also like to do -- we'd also like you to do the same thing
9 for all of the MDL custodians, which quadrupled the number of
10 custodians. And in an effort to not come back to you with
11 anything else, we said okay.

12 So as a result, we had 900 lawyers reviewing all of those
13 documents, okay, and that is the June 3rd production plaintiffs
14 are referring to. They now say, and I wrote this down because I
15 just -- I can't get over this. They said, the limited set of
16 custodians that were for a distinct and limited purpose. That
17 distinct and limited purpose was the proceedings before Judge
18 Corley on ADI. And the parties stipulated to those custodians.
19 They are the ADI custodians, which it makes sense then that if
20 you're doing an ADI production that you would use ADI custodians.

21 Plaintiffs then inform me that, no, we don't think that
22 should hold anymore. We don't think we should use complete -- we
23 think we should go beyond what Judge Corley ordered, and we
24 should do this for all the MDL custodians.

25 **THE COURT:** I'm pretty confident the plaintiffs --

1 **MS. RING:** 78.

2 **THE COURT:** I'm pretty confident the plaintiffs did not say
3 to you we should go beyond what Judge Corley ordered and expand
4 the list of --

5 **MS. RING:** Your Honor, they did. They said -- I said,
6 listen, I understand that when you were before Judge Corley, you
7 used these 26 ADI custodians. Yes, we did, but we don't like
8 that. We think we should do it for all the MDL custodians. And
9 I said okay. But as a result, instead of 26 custodians, now all
10 of a sudden we had 78 additional custodians.

11 It has resulted -- again, we've reviewed millions of
12 documents, scheduling emails, you name it. And we hired 900
13 attorneys to get that done, and we did. And we finished it June
14 3rd for -- the MDL custodians, too, were split into two buckets
15 -- the exemplar MDL custodians and the straggler MDL custodians.
16 We are done with the exemplar MDL Custodians, and only the
17 stragglers remain, and those will be done on June 15th.

18 So, Your Honor, again, I really and truly feel this is no
19 good deed goes unpunished. We raised -- I raised this because I
20 did not want any more disputes about ADI. I did not want later
21 for plaintiffs to accuse us of not having told them that we only
22 used logically the ADI custodians.

23 And in response, they wanted us to do everything, which we
24 did. So now they have everything.

25 **THE COURT:** Okay.

1 **MS. RING:** And --

2 **THE COURT:** Well, you know, we are not going to have a long
3 discovery hearing today.

4 **MS. RING:** Yeah.

5 **THE COURT:** I want to -- what I would like to do is sort of,
6 you know, continue getting an update from Mr. Loeser about sort
7 of where we are and what is needed. And then we can talk about
8 where we are and what is needed. We're not going to adjudicate,
9 you know, any allegations of misconduct today on this hearing.
10 I've got sort of -- you know, I'll just say it now.

11 I mean part of the reason that I moved the hearing date on
12 the motion for sanctions is because I was anticipating, you know,
13 additional problems like this. And I think, you know, it's
14 probably better to adjudicate all of the alleged discovery
15 misconduct sort of in one fell swoop in September.

16 And we need to figure out a way for the plaintiffs to
17 supplement their motion for sanctions and, of course, for
18 Facebook to respond so that all of it can be teed up for the
19 hearing in September. So -- and that would include, by the way,
20 this -- you know, the conduct relating to the 30(b)(6)
21 depositions that has taken place so far, I assume.

22 But anyway, so, Mr. Loeser, why don't you continue and we'll
23 sort of make a list of the things that you think you need from me
24 right now understanding -- you mentioned issuing an order to show
25 cause, you know, about holding Facebook in contempt. I mean I

1 think that it probably would be appropriate just to give you an
2 opportunity to supplement your sanctions motion that's scheduled
3 to be heard on September 1st and sort of adjudicate all those
4 issues of potential misconduct at the same time.

5 Does that -- is that inadequate from your standpoint, Mr.
6 Loeser?

7 **MR. LOESER:** I think it's a good plan. I would just say the
8 one concern I have is that that still leaves us without a date.
9 I know Ms. Ring just said they completed on June 3rd. I don't
10 believe they've completed the ADI production. There's more --

11 **THE COURT:** Well, I mean maybe the answer is that I ordered
12 it completed on -- no, I think Ms. Ring said that all the rest of
13 it will be turned over by June 15th. I think I --

14 **MS. RING:** That's right.

15 **THE COURT:** Right.

16 And so, I mean, maybe the answer is I order them to complete
17 the -- again, I feel like I've been ordering this for a while and
18 everybody's been ordering this for a while, but order them to
19 complete the ADI production by June 15th. And you know, then, on
20 September 1st, we can talk about how many orders they didn't
21 comply with over this long period.

22 **MR. LOESER:** I think that sounds sensible, Your Honor. And
23 obviously, we have a lot to say about what you just heard, but
24 I'll hold off and we can deal with that when we're adjudicating
25 that issue.

1 **THE COURT:** I think that makes the most sense. Just in the
2 interest of, you know, trying our best to, you know, get
3 discovery, you know, accomplish something in discovery here, you
4 know.

5 **MR. LOESER:** I agree, Your Honor. And I agree it's been a
6 tremendous struggle.

7 **THE COURT:** Okay. So you want me to order Facebook to
8 complete the ADI production by June 15th?

9 **MR. LOESER:** With a parenthesis saying that doesn't somehow
10 provide you a dispensation for what should have happened a long
11 time ago.

12 **THE COURT:** That is not necessary.

13 **MR. LOESER:** Okay.

14 I think that's a good approach, Your Honor.

15 **THE COURT:** Okay. So I will order Facebook to complete the
16 ADI production by June 15th.

17 All right. What else?

18 **MR. LOESER:** The next issue is a new issue, and that's the
19 privilege log. And, frankly, this has been -- I don't want to
20 overuse the word "remarkable" in this case, but this has been
21 very remarkable. After the February case management conference,
22 Facebook provided an updated privilege log.

23 Prior to that conference, Facebook had logged 21,937
24 documents over the three-plus years of the litigation. After
25 that conference, they provided a new log, and the logs are an

1 iterative process that's supposed to happen, you know, as the
2 documents are produced.

3 The new log covering I believe the period from the end of
4 January through the date of the new log in March, they added
5 233,544 completely withheld documents to that log -- you know,
6 many multiples of what had been logged previously. And we were
7 pretty shocked by that, and so we --

8 **THE COURT:** I mean they point out that a lot of those logs
9 were -- ended up being duplicates or near duplicates, right?

10 **MR. LOESER:** Yeah. Unfortunately, when you completely --

11 **THE COURT:** I'm not sure it changes the point, but --

12 **MR. LOESER:** Yes.

13 **THE COURT:** -- I wonder if you're exaggerating the point.

14 **MR. LOESER:** No. Because when we received the log, the
15 documents are completely withheld. We have no idea what is or
16 isn't a duplicate. And so what we got was a log of 233,000-plus
17 documents on it. So it's nice to now learn that there's some
18 duplicated on there, but that's not what we knew when the log was
19 provided.

20 **THE COURT:** I understand that. But in terms of assessing --

21 **MR. LOESER:** Yeah.

22 **THE COURT:** -- how many, you know, documents they improperly
23 identified as privileged, it doesn't seem fair to count the
24 duplicates. And it doesn't seem like you need to because even if
25 you eliminate the duplicates, it seems like many many documents

1 were improperly withheld as privileged and improperly designated
2 --

3 **MR. LOESER:** I think that's right. Yeah. We did learn
4 along the way that I think it's some 80 something thousand
5 documents or -- so you have a huge log, many times the size of
6 the log before. We raised that. We went through the Special
7 Master process with -- the mediation process, which is something
8 I do want to make sure we come back and talk about because that's
9 been tremendously helpful, as well.

10 And we came up with a protocol for dealing with such a large
11 log, which Facebook agreed to sample the log. They drew their
12 sample. And after looking at their sample, they decided to
13 withdraw about 63 percent of the documents from the sample and
14 produce the documents. And then they also added to that another
15 10 percent or so that they produced.

16
17 So basically, most of the documents that they sampled, the
18 vast majority were not privileged. And so -- and that's a huge
19 problem. It's a huge number of documents. These are -- we're
20 starting to get the documents now. They've produced, I think,
21 about 45,000 of the documents. And so these are wrongfully
22 withheld documents that were overdesignated.

23 And it's the same problem we keep having when we go take
24 depositions. We don't have documents for some deps. We get
25 documents a few days before others. And it's just prejudicial.

1 That's not what -- the log is not like a resting place while you
2 wait to decide whether to produce critical documents. It's
3 supposed to be for privilege documents. And most of the
4 documents that they put on their log aren't.

5 So we've had lots of meet and confers about this. Facebook
6 has agreed that it will completely redo its entire privilege log
7 and will produce the documents that it designates. There was a
8 conference today that I was not on. I understand Facebook
9 proposed completing that process by June 24th. We think that's
10 too long.

11 This never should have happened. We want all of those
12 documents by June 15th. If they can't complete a re-review, then
13 just produce the documents and claw back the ones that are
14 privileged. But it's just another situation where we should not
15 continually be put in a position of having to deal with the
16 consequences of actions that never should have occurred in the
17 first place.

18 So I don't know why they did it. You would think after the
19 February conference, this would be something they'd be
20 particularly careful not to create new problems, but this is a
21 new problem and it needs a quick solution.

22 **THE COURT:** Well, so what you're saying is you want me to
23 order them to produce -- to complete the privilege log by June
24 15th, to redo the privilege log by June 15th. And to th extent
25 they're not able to do so, they just need to turn over all

1 responsive documents and then claw back anything that was
2 privileged. That's what you're asking for?

3 **MR. LOESER:** That is what I'm asking. I think that's an
4 appropriate resolution to the issue.

5 **THE COURT:** In the grand scheme of things, what -- like how
6 significant is the difference between June 15th and June 24th?

7 **MR. LOESER:** Well, I guess that's -- depends on what happens
8 between June 15th and June 24th. But, you know --

9 **THE COURT:** Well, I mean what I was asking is I don't -- I
10 sort of lost track of which depositions are scheduled when or --

11 **MR. LOESER:** Yeah.

12 **THE COURT:** -- you know, how it might impact, you know, the
13 30(b)(6) depositions that are -- you know, that are scheduled.
14 You know, that's sort of what I'm wondering.

15 **MR. LOESER:** Yeah. And there are depositions --

16 **MS. RING:** Those had been prioritized and addressed.
17 Derek, sorry. Go ahead.

18 **MR. LOESER:** There are depositions that are scheduled. And,
19 you know, if Your Honor was inclined to give them a little extra
20 time, which frankly is a phrase I hate to have leave my lips
21 anymore, that just means we might have to once again think about
22 retaking depositions that occur in the interval.

23 You know, it's -- I'll give you an example. We took a
24 deposition of a Facebook person and on Sunday, they de-designated
25 1,800 documents for the deposition that started Tuesday morning.

1 That's not helpful. That's just a bunch of documents --

2 **THE COURT:** You said they de-designated. They had
3 previously designated those documents as privileged, and they
4 then on Sunday two days before the deposition produced the
5 documents to you and said that --

6 **MR. LOESER:** They did. And --

7 **THE COURT:** -- they're non-privileged?

8 **MR. LOESER:** We have told them that, you know, we want these
9 documents and we sure want them for people whose depositions are
10 happening. So I get it that they're trying to look in their
11 overdesignation pile and pull out the ones that relate to the
12 depositions that are about to happen, but that just sort of
13 describes for you the challenge that plaintiffs face when they do
14 that.

15 **THE COURT:** Right.

16 **MR. LOESER:** So --

17 **THE COURT:** Well, you know, as I said last time, I'm very --
18 you know, very open to, you know, allowing you to take, you know,
19 additional depositions or retake depositions to the extent, you
20 know, necessary to alleviate any potential, you know, prejudice
21 as a result of turning over documents late or at the eleventh
22 hour or whatever.

23 And so, you know, you know that you can always request that.
24 But I mean I think absent some very specific reason why the 24th
25 is not adequate, I would just propose to order them to produce a

1 revised privilege log or a new privilege log by June 24th.

2 And if they're -- you know, if they have -- if the privilege
3 log they produce is -- if they're unable to complete it by the
4 24th, then they're ordered to turn over all the documents and,
5 you know, seek to claw back any privileged documents.

6 And if they -- again, if they -- if you believe they violate
7 that order, you can -- you know, you can include it in a
8 supplemental submission in support of your sanctions motion that
9 will be heard on September 1st.

10 **MR. LOESER:** I think that also is a good plan.

11 I guess the one clarification on the 24th, they should
12 produce all of the documents that they have now decided are not
13 actually privileged.

14 **THE COURT:** I assume -- yeah. And I didn't say that, but I
15 assume that is included in that. So yes.

16 **MR. LOESER:** Okay.

17 So the next issue, Your Honor, is the plaintiff data issue.
18 As Your Honor wells knows, this is something that the Special
19 Master has been working through for a while. He's done a
20 tremendous amount of work which --

21 **THE COURT:** Seems like it.

22 **MR. LOESER:** -- which we greatly appreciate. We have a
23 whole lot more information than we had before he started that
24 process.

25 We have a new concern which is a serious concern that's the

1 subject of a brief that we just filed which was that we finally
2 were able to take the preservation 30(b)(6). And during that
3 deposition, we learned about a -- information about named
4 plaintiffs that hadn't been previously disclosed collected by a
5 tool that was never disclosed and a tool that the witness
6 testified was normally used by Facebook to collect information
7 about users.

8 And this is something that I don't think there's anything
9 frankly for you to do right now. This is in the hands of the
10 Special Master. We will be seeking additional relief for that.
11 This is a fight we've had with Facebook for years about Facebook
12 claiming that this DYI tool which is the tool that provides
13 information that Facebook users themselves can get from Facebook
14 is incomplete.

15 And this really is a concerning fact that you will
16 definitely see us if the -- I mean testimony was corporate
17 testimony. And as this unfolds through the Special Master, this
18 obviously will be something that will be addressed in the
19 supplemental -- supplement to our sanctions motion.

20 **THE COURT:** Okay. What else?

21 **MR. LOESER:** The last issue -- actually, it's not the last
22 issue, I'm sure you wish it was the last issue, but the 30(b)(6)
23 depositions. You know, you saw two pretty divergent views of
24 what's happened with the 30(b)(6) depositions.

25 Here's the course of events. We served a draft notice in

1 December of last year that had the topics. We really wanted to
2 talk to Facebook about the topics so there wouldn't be any issues
3 with the topics. The wouldn't engage. And then in March, we
4 served the actual notice after the February conference. We had
5 conversations with Facebook about the time for each topic. We
6 heard no objection to any of the topics.

7 Right before the last status conference, Facebook served
8 objections to the topics. We called them because we were quite
9 surprised to see the objections. We had a conversation in which
10 we were assured that the objections were boilerplate and they
11 wouldn't stop any testimony.

12 And then roll forward to the first deposition which was the
13 subject of the sanctions motion, and there was a lot of
14 limitations placed on --

15 **THE COURT:** Sanctions motion, you're talking about the
16 sanctions motion that you filed in front of the Special Master?

17 **MR. LOESER:** Yes.

18 **THE COURT:** And then the Facebook stipulated to paying your
19 attorney's fees and stipulated to reproducing this person for the
20 deposition?

21 **MR. LOESER:** And a lot of other -- let me go back because I
22 went too quickly and so I want to make sure the history is laid
23 out. Yes.

24 When we finally started taking 30(b)(6) depositions, we
25 heard for the very first time from Facebook during the deposition

1 of a bunch of limitations placed on the witness's testimony.
2 There was also a whole lot of conduct during that deposition that
3 caused us to file the sanctions motion regarding Facebook and its
4 counsels' conduct. Facebook stipulated to all the relief that we
5 were seeking, including our attorneys' fees.

6 And the stipulation also had provisions for how to prevent
7 arriving at a deposition and learning for the first time about
8 limitations that had been imposed on the preparation of the
9 witness.

10 **THE COURT:** And this was Hendricks (phonetic), right? Ms.
11 Hendricks was the deponent?

12 **MR. LOESER:** Yes.

13 **THE COURT:** When did this deposition take place?

14 **MR. LOESER:** It was on May 5th.

15 **THE COURT:** May 5th, okay. So --

16 **MR. LOESER:** That was the first 30(b)(6) --

17 **THE COURT:** When was our last case management conference?

18 **MR. LOESER:** I believe it was --

19 **THE COURT:** -- where I invited you to file a sanctions
20 motion?

21 **MR. LOESER:** The initial -- the invitation was in February.
22 And then the -- there was a conference after that that was in --

23 **THE COURT:** Okay.

24 **MS. RING:** March.

25 **MR. LOESER:** -- I believe March 8th. Is that right?

1 **THE COURT:** March was when Ms. Ring came in and said
2 everything's going to be okay now because I'm here?

3 **MR. LOESER:** Yeah, that's the one.

4 **THE COURT:** Okay.

5 **MR. LOESER:** And -- so, anyway, I'm not describing it very
6 well, but it's been a bit of a train wreck. And the problem has
7 been we didn't know Facebook was going to have problems with the
8 topics that were identified in the notices. We found out at the
9 first deposition. And the parties have had lots of conferences
10 since then to make sure witnesses come prepared.

11 The problem is that witnesses have been prepared to talk
12 about a whole lot of topics, and we have corporate testimony on a
13 number of topics. But in each deposition, there have been topics
14 for which the witnesses have not been prepared. What that means
15 is we have to then ask Facebook for another witness to come back
16 and testify about that topic. And so that draws this out.

17 And you may recall that we had what we thought was an
18 agreement with Facebook to complete all 30(b)(6) depositions in
19 April. Your Honor noted how valuable those depositions are
20 because that's where you learn about other people who you need to
21 depose and corporate positions. We couldn't complete them in
22 April. We couldn't complete them in May. And now they're
23 running into June, and there's one topic that Facebook says it
24 won't provide anybody until July.

25 So what we would like to do, Your Honor, is we want an order

1 requiring Facebook to present witnesses for all topics that are
2 in our notice by June 30th. And should Facebook have any
3 concerns about the topics, we have been providing them with very
4 very detailed descriptions of the testimony we intend to take and
5 we will continue to do that.

6 We also give them -- this is highly unusual. The protocol
7 requires us to provide Facebook three days before the deposition
8 with every document we intend to use as an exhibit at the
9 deposition. So we have been doing that. So there's no reason
10 for these witnesses not to come and be able to testify. We just
11 think we need to get one.

12 **THE COURT:** Okay. So just to be clear, other than ordering
13 -- requiring Facebook to produce all of these 30(b)(6) witnesses
14 by -- for deposition by no later than June 30th, were you asking
15 for something else? If so, I didn't quite understand.

16 **MR. LOESER:** That's all we're asking for, Your Honor. The
17 rules are pretty clear on what the witnesses are supposed to be
18 able to do. If the witnesses continue not able to do that, then
19 again, that's something you'll be hearing from us further in the
20 sanctions supplement.

21 **MS. RING:** Your Honor this is another I would really
22 appreciate being heard on, especially since you said I came in to
23 fix this. Look, I don't think it's helpful to have a back-and-
24 forth on -- I totally disagree with the way that the progression
25 of this has been described.

1 There has -- the issue that we are facing is the same one
2 that plaintiffs are forcing further issues by asking you to issue
3 an order requiring all of these depositions to be completed by
4 June 30th, which is --

5 **THE COURT:** Could I -- before we get to the timing, and
6 regardless of -- you know, I mean I understand you're saying you
7 disagree with his description of the progression of events. But
8 just putting aside for a moment the progression of how we got
9 here on these 30(b)(6) depositions, I mean I'm looking at, you
10 know, what happened in Ms. Hendricks' deposition.

11 And I just don't understand -- so this deposition took place
12 in, you know, May. You know, we had this conference in February
13 in which I expressed, you know, grave concern that Facebook was
14 committing serious discovery misconduct and litigation
15 misconduct.

16 And, you know, we started talking about the issue of not
17 just monetary sanctions but, you know, potentially issue
18 sanctions. And we, you know, talked about Mr. Solanki being, you
19 know, present for everything.

20 And then I'm looking at this -- you know, what happened in
21 this deposition in May with, you know, your lawyer instructing --
22 you know, with the witness refusing to answer questions and the
23 lawyer instructing the witness not to answer questions. I just
24 don't understand how that could have happened.

25 **MS. RING:** So --

1 **THE COURT:** Regardless of the progression of how we got to
2 that deposition, how could that have -- and I understand that
3 Facebook, you know, there was -- the plaintiffs filed a motion
4 for sanctions with the Special Master, and Facebook agreed to pay
5 the plaintiffs' attorneys' fees and agreed to -- I believe agreed
6 to reproduce the witness.

7 But I just don't understand how that could have happened,
8 you know, in May of this year.

9 **MS. RING:** May I?

10 **THE COURT:** Yeah.

11 **MS. RING:** Your Honor, and this is not rehash the
12 progression. I won't do that. But the issues that it created
13 which are these are incredibly broad 30(b)(6) topics. When -- I
14 was on this call myself. When I asked we need to talk about
15 this, we need to focus these to understand what you're actually
16 seeking from these witnesses, after the February conference, and
17 this is what I hear a lot, if we don't agree to what plaintiffs
18 are demanding, then they're going to tell you.

19 And so I'm trying to avoid issues going back to you. So we
20 said, okay, fine, we'll schedule the depositions. We're not sure
21 what the scope is. They're so incredibly broad. And speaking of
22 what the law is clear on, the law is clear for a 30(b)(6) it must
23 be particularized. Otherwise, you can't prepare the witness
24 adequately.

25 They basically want, and I wrote this down --

1 **THE COURT:** But I -- look --

2 **MS. RING:** But I'll get to -- I will get to the point on the
3 sanctions. I appreciate what you're asking.

4 We are -- that should not have happened. And in my view, it
5 reflects the frustration that has been created by the lack of any
6 meaningful meet and confer or meeting of the minds between the
7 parties. And we did not -- we could have --

8 **THE COURT:** I mean was there --

9 **MS. RING:** -- and should have responded to that frustration
10 more constructively. It was wrong. And that is why we resolved
11 it right away. And when Mr. Loeser says that that's why they had
12 to file the motion, they didn't have to file the motion. We went
13 to them immediately and said -- we agreed to everything they
14 wanted and said, look, we're sorry this is -- we are all
15 frustrated, this should not have happened. We should not have
16 responded in the way that we did to that frustration. Let's try
17 to make it better. And they filed the motion anyway.

18 And that's fine. That's the prerogative to do that. And
19 then before agreeing to resolve it, they then made us agree to
20 give them 100 hours of 30(b)(6) testimony, which we did. I've
21 never even heard of such a thing, okay. They had negotiated 21
22 hours. Now they have 100.

23 So basically, it's just a "yes" fest. So that's fine. But
24 I do want -- in all seriousness, I am very sorry that that
25 happened in May. That should not have happened. And I hope that

1 you take the fact that we just resolved it. We paid them money.
2 We've given them 100 hours of deposition testimony, which I've
3 never even heard of. We want to move on from it and do it in a
4 constructive way, and that's what we've been trying to do.

5 And when in the absence of a meaningful meet and confer, we
6 have now been trying to send letters before every deposition to
7 say what our understanding of the scope is and what our
8 understanding of the limitations are. And, yes, plaintiffs do
9 provide us documents sometimes before these depositions.
10 Sometimes there are hundreds of them three days before the
11 deposition.

12 We can't get through all of them. We do our best, you know,
13 but there -- in a case this complicated as this, there are always
14 going to be issues in 30(b)(6). There's no question about it.
15 But they have been amplified here because of the inability and
16 for whatever reason -- they think it's our fault, we think it's
17 their fault -- to have meaningful meet and confers.

18 And in my experience, now my four months of experience on
19 this, it is because the plaintiffs will not agree to any kind of
20 limitation. And so it's very hard in the face of that to prepare
21 a witness to testify on every single thing Facebook has ever done
22 in the last 15 years. It's very hard. It's impossible. We are
23 doing our best. So --

24 **THE COURT:** That does not -- I'm looking at that deposition
25 that took place on May 5th or whatever date it was. That is not

1 doing your best. I'm sorry. But, you know, that is not close to
2 doing your best.

3 **MS. RING:** May I ask are you talking -- when you're saying
4 looking at the deposition, are you looking at plaintiffs'
5 sanctions motion or the actual transcript of the deposition
6 because --

7 **THE COURT:** Well, let's talk about that.

8 **MS. RING:** -- we didn't get a chance to respond.

9 **THE COURT:** Right. Right.

10 **MS. RING:** Right?

11 **THE COURT:** Let's talk about that for a second because this
12 is more of a housekeeping matter, but it's an important
13 housekeeping matter. And that relates to, you know, the issue of
14 sealing.

15 So if you look, for example, at the plaintiffs' -- we have
16 the plaintiffs' -- we have the stipulation that the Special
17 Master signed ordering you to pay their attorneys' fees for this
18 deposition. And then you have --

19 **MR. LOESER:** We're waiting, by the way.

20 **THE COURT:** What?

21 **MR. LOESER:** We're still waiting. I'll send Ms. Ring my
22 address, but we don't have the check.

23 **THE COURT:** Oh, for the check?

24 **MS. RING:** I'll Venmo you, Derek.

25 **THE COURT:** And does Facebook have its own currency yet?

1 Maybe you can use that.

2 **MS. RING:** Oh, good idea. I don't think they would take it.

3 **THE COURT:** Probably not.

4 So, you know, then you have the -- you know, all of this
5 stuff needs to be on the docket, right. All of the stuff
6 relating to these discovery disputes needs to be on the docket,
7 and we can have further discussion about what's the best way to
8 get them on the docket.

9 Maybe it's just that when the plaintiffs file their
10 supplemental, you know, motion for sanctions, they make sure
11 everything's that they need included is included, and then
12 Facebook can make sure in its response that everything it needs
13 included is included. But, you know, right now we have this --
14 you know, we have the plaintiffs' motion for sanctions.

15 And I believe as of now, there's -- some of it is still
16 redacted. So, for example, this exchange on Page 4 of the motion
17 where, you know, the plaintiffs' lawyer is trying to ask Ms.
18 Hendricks these questions and then, you know, we have these
19 objections from Facebook's lawyer and then this instruction from
20 Facebook's lawyer not to -- to the witness to not answer the
21 question.

22 And, you know, I mean I gather that's one example of, you
23 know, many inappropriate things that happened at this deposition.
24 But in the motion, currently it's redacted. And I guess it's --
25 you know, I wanted to have a little bit of a conversation about,

1 you know, whether we can avoid so many redactions on these
2 papers, right.

3 And then the deposition transcript has also been filed,
4 right, but I believe that it's currently redacted in its
5 entirety. In this motion for sanctions, it's so obvious that
6 this stuff should not be redacted. I mean I understand why the
7 plaintiffs did it, right. The plaintiffs did it because I guess
8 the entire deposition transcript was designated as confidential.
9 And so, you know, this excerpt from the deposition transcript
10 needed to be redacted, filed provisionally under seal.

11 But I'm just wondering, like -- you know, and then the whole
12 -- and then the entire deposition transcript is redacted, I
13 believe, as of now. Is that correct?

14 **MS. RING:** It is, Your Honor. But it's a process where it's
15 just -- it's designated and then we go back and go through it and
16 very careful pursuant to your prior instructions.

17 **THE COURT:** Right.

18 But I'm just wondering I mean is there a way -- I mean maybe
19 the answer is no. But is there a way, you know, in a situation
20 like this where it's so obvious that this stuff should not be
21 redacted and, you know, this case is a matter of public interest.
22 And Facebook -- frankly, Facebook's litigation conduct is a
23 matter of public interest.

24 You know, is there a way to avoid filing these things with
25 these redactions? I mean it's just -- maybe it's too hard to do

1 it, you know, before the fact of the filing. But, you know, you
2 look at this passage that I just described, and it's so obvious
3 that it shouldn't be redacted. I mean maybe the answer now is I
4 just deny the motion to seal and then order you to file
5 unredacted versions on the docket.

6 But is there an easier way to do this when in situations
7 like this when it's so obvious -- for example, I'm looking at
8 Page 9 of the sanctions motion, and the following words are
9 redacted: "Whether the third parties actually access data because
10 the actions of third parties did not go to Facebook policies or
11 procedures or processes that were developed in order to monitor
12 third parties."

13 And then Ms. Hendricks testified that she wasn't required to
14 prepare on the topics counsel had deemed excluded. I mean that
15 so obviously shouldn't be redacted. Is there anything we can do
16 to sort of deal with that at the front end and prevent those
17 redacted versions from going on the docket?

18 **MS. RING:** So, Your Honor, I have to admit I don't know the
19 full history of what the parties have discussed or what the Court
20 has ordered about these redactions. I think that in this
21 situation, the issue was definitely one of timing in that this
22 motion was filed within 24 hours of the deposition, right, so
23 there was --

24 **THE COURT:** And the transcript is --

25 **MS. RING:** Right.

1 **THE COURT:** The transcript is designated confidential --

2 **MS. RING:** Right.

3 **THE COURT:** -- in its entirety at the outset and so -

4 **MS. RING:** At the end of the depo, right. And so then there
5 wasn't an opportunity no matter how fast we worked to get that
6 done by the time this motion was filed. But, you know, look, I
7 have to talk to Facebook and I have to -- but I'm happy to talk
8 to plaintiffs.

9 Maybe there are situations where we can stipulate for some
10 limited purpose like that when there's such a quick turnaround
11 and there's just not time to review the full transcript and go
12 through the whole process.

13 **THE COURT:** Yeah. I mean -- and I understand that the
14 sealing stuff is really hard for the lawyers.

15 **MS. RING:** Yeah.

16 **THE COURT:** I do understand that. And I don't want to
17 create -- you know, I don't want to create, you know, unnecessary
18 work for anybody.

19 But I just wanted to sort of share my, you know, sort of
20 sentiment that, you know, a lot of stuff is getting filed on the
21 docket that is initially redacted that all you need to do is
22 glance at it for half a second to see that there's no business
23 redacting that stuff. And, you know, I would love for there to
24 be a way to, you know, avoid redacting it in the first place.
25 Maybe there's not. But I wanted to raise that frustration.

1 **MR. LOESER:** Your Honor?

2 **MS. RING:** We're willing to -- I mean, sorry, go ahead.

3 **MR. LOESER:** No, go ahead.

4 **MS. RING:** We're willing to discuss that, Your Honor. It
5 wasn't -- again, I think on this particular issue was one of
6 timing. There just was no opportunity to try to go back and
7 review the whole transcript before the motion was filed. But
8 maybe there are ways to --

9 **THE COURT:** But --

10 **MS. RING:** -- shortcut.

11 **THE COURT:** Yeah. I mean maybe. But in any event, you
12 know, it will be important to have, you know, these -- you know,
13 all of this stuff on the docket, you know, and as part of the
14 record because, like I said, it is a matter of public concern and
15 it relates to, you know, Facebook's litigation conduct which will
16 be the top subject of this motion that will be heard in
17 September.

18 **MS. WEAVER:** Your Honor, if I might?

19 One way that courts do deal with that is to have a filing
20 provisionally under seal and then a certain number of days by
21 which the party who wishes to have the material sealed has to
22 respond five days.

23 **THE COURT:** Right. Well, that's -- and that's what happened
24 in this case. But I'm asking if -- what I was asking is if
25 there's a way to sort of avoid having to go through that process

1 in a situation where something so obviously should not be
2 redacted and all you need to do is glance at it for half a second
3 to realize that it shouldn't be redacted.

4 **MR. LOESER:** Well, Your Honor, one --

5 **THE COURT:** I just know because it requires you to do more
6 meeting and conferring at the front end and you already hate each
7 other so much that (indiscernible) would be impossible.

8 **MR. LOESER:** Hate is a strong word.

9 **MS. RING:** We don't hate each other.

10 **MR. LOESER:** I will say one thing you could do is to
11 accelerate the process. You know there is an obligation when
12 saying something needs to be redacted to have a good basis for
13 doing so. So there --

14 **THE COURT:** Yeah, but I also understand that in the case of
15 a deposition, you know, it takes time to go through the
16 deposition and figure out what really needs to be redacted and
17 what doesn't.

18 **MR. LOESER:** That's true.

19 There are -- just for clarity, there's different levels of
20 confidentiality designations, and one of the levels is Attorneys'
21 Eyes Only, which is supposed to be reserved for a very narrow --
22 trade secrets, things like that.

23 And I do think while Facebook is evaluating this process, I
24 think it should also evaluate the use of Attorneys' Eyes Only
25 designations for deposition transcripts, which is a burden and an

1 obstacle for the plaintiffs and seems unnecessary. And it's
2 something that I think to be pretty quickly determined, like we
3 shouldn't have to wait 60 days to find out if the whole
4 deposition was Attorneys' Eyes Only trade secret protected or
5 something like that.

6 So I throw that into the pot of things for Facebook to
7 consider.

8 **THE COURT:** Well, I think -- I mean I think that the -- the
9 sealing issue as it relates to this Hendricks deposition, I think
10 it's properly teed up. I think that, you know, you filed a bunch
11 of stuff provisionally under seal, and then Facebook filed a
12 response if I remember correctly saying, you know, most of this
13 stuff can be unredacted and there are just a couple of little
14 things that we need redacted.

15 And so I think that's teed up now, and I can act on that.
16 And we can get most of this stuff unredacted. But I was just
17 raising the concern about whether any of it could be done at the
18 front end. So anyway, think about that.

19 But, you know, the upshot is, once again, I mean the conduct
20 in this deposition appears very problematic and it will, I
21 assume, be part of, you know, the supplemental motion that the
22 plaintiffs filed. I know that Facebook has already agreed to pay
23 the attorneys' fees, but it's still -- I mean we still need to be
24 tallying up the various, you know, acts of litigation misconduct
25 that Facebook has committed.

1 So anyway --

2 **MS. RING:** Allegedly, Your Honor.

3 **THE COURT:** Well, on this one --

4 **MS. RING:** Plaintiffs are definitely tallying it up.

5 **THE COURT:** On this one --

6 **MS. RING:** Plaintiffs are definitely tallying it up. Don't
7 worry.

8 **THE COURT:** In this one, I don't think -- for this
9 deposition, I don't think we need to use the word "allegedly."

10 **MS. RING:** Okay. That's fair.

11 **THE COURT:** So that's fine. So the -- oh, let's get back to
12 the dates, Ms. Ring. So Mr. Loeser is asking me to order all of
13 the 30(b)(6) witnesses to be produced by June 30th. And --

14 **MS. RING:** And I was asking please don't do that only
15 because I think it will compound the issue that I was trying to
16 describe.

17 I have not personally been on a case before where -- you
18 know, we've been trying to -- we've identified, I've lost track
19 now, but maybe nine witnesses trying to identify those that
20 actually have the best knowledge of particular topics or aspects
21 of topics. And the topics are so broad and ill-defined that it's
22 very hard to prepare a witness to address them.

23 And if we push forward without any acknowledgment of that,
24 we end up having depositions where the whole time is spent
25 complaining about they can't answer this question, they can't

1 answer that question.

2 **THE COURT:** But when were these 30(b)(6) notices served?

3 **MS. RING:** March.

4 **THE COURT:** Okay.

5 **MS. RING:** March.

6 **THE COURT:** Right. But it's -- I mean, again, we're in June
7 now, right?

8 **MS. RING:** Yes.

9 **THE COURT:** I mean is this a problem -- this is a rhetorical
10 question, but my question is, is this a problem of your client
11 not being cooperative with you or is that part of the problem?

12 **MS. RING:** It is not.

13 **THE COURT:** You know --

14 **MS. RING:** It is not. And that's why I say -- I ask please
15 don't order these depositions to go forward June 30th because it
16 is -- again, the topics are so broad and ill-defined.

17 I mean these witnesses -- I wrote these, you know, stats
18 down because we've had seven depositions -- since the last CMC,
19 it's been two months. We've had seven depositions. Witnesses
20 have provided 40 hours of testimony on six of the ten topics, and
21 they've spent over 500 hours preparing for them.

22 The ones that remain -- the only ones we've asked to go into
23 July are very specific, okay. One of them concerns targeted
24 advertising which, Your Honor, that has been -- in my view, that
25 is the reason for the dispute over the named plaintiff data. And

1 it's been a very difficult issue, I think a legitimate issue that
2 Facebook raised.

3 But in any event, we've given up. It's fine. We're going
4 to give it to them. But it's a very particularized topic that's
5 very hard to get your arms around, and we've asked -- you know,
6 we did offer a date for that one, by the way, June 13th. You
7 know, we didn't hear back so then we offered July dates which
8 plaintiffs responded to and accepted. So I'm surprised to hear
9 them asking now for an earlier date.

10 The other one is for the video. And this is one that we did
11 address in our statement. I'm sure you saw it. But that is one
12 that, again, we could have just objected. I mean Judge Corley --
13 the parties went through what seemed from the outside a horrible
14 process to go through and identify all the custodians and
15 identify all the search terms.

16 And there were many search terms that were for video, and
17 that was supposed to be done, over. A month after the Special
18 Master was appointed, oh, there are suddenly new video document
19 requests for which now plaintiffs want new search terms after
20 Judge Corley shut that down several times. So now we have new
21 search terms. We're collecting from new custodians.

22 There are hundreds of thousands of documents now that
23 because of plaintiff's search terms they want us to review, and
24 they say we want them before the deposition. That's why the
25 deposition is -- we've proposed dates in July because we cannot

1 get through the hundreds of thousands of new documents that,
2 again, we could have just stood on our objection but we didn't.
3 We said fine, we'll do it.

4 **THE COURT:** So what are the 30(b)(6) depositions that you
5 are proposing take place in July?

6 **MS. RING:** The advertising related ones, Your Honor, and the
7 video. All of the others have either occurred or are set to
8 occur in June. The only two we'd ask --

9 **THE COURT:** And so those are --

10 **MS. WEAVER:** (Indiscernible).

11 **MS. RING:** I'm sorry. That's not true. I'm sorry.

12 Sorry, Liz. That's true.

13 There's also one more topic -- Topic 5, I believe -- which
14 concerns basically this was -- this is one that we put on hold by
15 mutual agreement because it was the topic of the proceedings
16 before the Special Master concerning named plaintiffs' data.
17 Plaintiffs now a week or two ago said we should take this off
18 hold because we're not getting to the end of those proceedings,
19 thankfully, and so we've been meeting and conferring over the
20 scope of that topic.

21 When we had that meet and confer, it was described as all
22 systems relating to how data comes into Facebook, how it is
23 sorted, used, how derivative data is created for any purpose, and
24 how data flows out of Facebook. So it's basically everything.

25 So we need to narrow this topic. It is going to be

1 impossible to identify 100 witnesses who could testify to such a
2 thing. So that's the other one that's going into July. And if
3 we're forced -- you know, if we're forced to do it by the end of
4 June, we're going to be right back here with more complaints of
5 how we did not have a prepared witness, we did not have agreement
6 on what the topics covered.

7 We can reach agreement, and we can get a witness who can
8 actually testify on these topics. But we need until, you know,
9 July. And we've proposed dates in the middle of July.

10 There's still three months left of discovery. This is not
11 delay. This is not because Facebook has ever said no. Since I
12 joined this case, Facebook hasn't said no to one thing I've
13 asked. This is because, again, for the video, we've got huge new
14 document requests --

15 **THE COURT:** I'm tempted to ask if they've responded to all
16 of your calls, but I'm not going to ask that.

17 **MS. RING:** Yes, they do, and my texts. Yes. Yes.

18 **MR. LOESER:** Your Honor, maybe we need to hit rewind here
19 for a second on this 30(b)(6) deposition. Maybe this will help
20 finish this part of the conversation.

21 Plaintiffs get no value out of a 30(b)(6) deposition with an
22 unprepared witness. That's why we sent them a notice in
23 December. As of March we had heard nothing about any problems
24 they had with the topics. The deposition started, it was clear
25 --

1 **MS. RING:** Your Honor?

2 **MR. LOESER:** I'm sorry, Ms. Ring.

3 **MS. RING:** That's not true. I'm sorry.

4 **MR. LOESER:** There are a lot of things you said that were
5 untrue, but I didn't interrupt you (indiscernible).

6 **MS. RING:** Well -- yes, okay.

7 **MR. LOESER:** So there were -- it became clear at the very
8 first deposition that when Facebook prepared the witness, it made
9 decisions about what the witness would and wouldn't be prepared
10 for. We don't have to guess about whether that's true because
11 Facebook's lawyer decided to say that on the record in the middle
12 of the deposition all the things he did and didn't prepare the
13 witness for.

14 That set in motion a process where we provided even more
15 information. We are now telling Facebook in advance of the
16 deposition -- we're sending a detailed email saying these are the
17 specific things we want to talk about, and then we sent the
18 documents. And in the very first deposition, there was a large
19 number of documents because, frankly, the parties forgot that we
20 were supposed to exchange the documents.

21 But in the subsequent ones, like in the deposition that I
22 took, I think there was something like 35 documents or 50
23 documents. And then after a couple of days of this, for the last
24 day which hasn't happened yet, I told Facebook's lawyer these are
25 the remaining four documents, like literally I want the witness

1 to be familiar with these documents. I want him to be able to
2 say what Facebook's position is on these documents.

3 And, frankly, the plaintiffs are willing to be that
4 specific, and we have provided so much notice because we really
5 want to know Facebook's actual corporate testimony on these
6 topics. So we meet and confer and meet and confer and we will
7 still do that. But we need to complete these depositions.

8 Now if Rose is making an impassioned plea for a little more
9 time, okay, you know, we can go into July for things that should
10 have been done in April. But the problem is we have depositions
11 we've taken in which we're now sending them letters saying these
12 are whatever number of topics that the witness wasn't ready for,
13 give us another witness to answer these questions.

14 So we need a deadline. We need a time at which we'd get
15 their testimony because, as Your Honor well knows, these are the
16 depositions which inform us of who else to depose. And we're
17 taking all these depositions of people before we've had the
18 30(b)(6) on the topic.

19 So that's the problem we're in. Ms. Ring, I understand her
20 concerns about wanting to make sure the witnesses are prepared.
21 We want these witnesses prepared. We just are running out of
22 time. So if we need to have a couple of more weeks to get it
23 done, fine, but let's get it done. Let's not keep dragging this
24 out forever with witnesses that can't answer questions.

25 And, frankly, Facebook needs to figure out a better way to

1 have their witnesses prepared to provide Facebook's position on
2 the documents we're providing to these witnesses, and that has
3 not happened over and over again.

4 **THE COURT:** Well, so it sounds like for now what I should do
5 is just order, again, that, you know, the 30(b)(6) depositions be
6 completed by June 30th with the exception of these three and that
7 these three -- the advertising, the video, and Topic 5 -- I don't
8 know what's the best way to describe Topic 5 -- but that those
9 three be completed by what date? July 21st?

10 **MS. RING:** Plaintiff just asks for days the week of the --
11 Your Honor, if you could, we would like this to end, also, okay.

12 **THE COURT:** Yeah. So July 21st --

13 **MS. RING:** So July 30th.

14 **THE COURT:** July 21st will be the deadline for completion of
15 those three -- we'll make it July 22nd since that's a Friday,
16 completion of those additional three 30(b)(6) depositions.

17 **MS. WEAVER:** Your Honor, there's an additional problem that
18 Mr. Loeser alluded to which is, for example, on Topics 4 and
19 Topic 10, the witnesses showed up and they provided testimony on
20 some topics but not others. So we immediately wrote letters
21 saying please give us -- so those are additional depositions that
22 have not even been scheduled. Like on Topic 10 --

23 **THE COURT:** Right. But I mean don't those need to take
24 place in June, as well?

25 **MS. WEAVER:** That would be -- as long as with that

1 clarification, we're fine with that, Your Honor.

2 **MS. RING:** Your Honor, look, some of these -- I don't think
3 you want to hear the details of this, and we'll just take it back
4 to the mediator and the Special Master. But, you know, it's not
5 fair to say that these witnesses are not prepared to testify
6 about documents. These are 30(b)(6) depositions. If you ask a
7 witness what did -- who has nothing to do with the documents --

8 **THE COURT:** Hold on a second. So I thought we were sort of
9 in agreement that all 30(b)(6) depositions need to be completed
10 by the end of June and -- with the exception of these three which
11 will be completed by July 22nd.

12 What -- so meaning after July 22nd, there will be no more
13 30(b)(6) depositions unless, again, somebody doesn't -- you know,
14 the lawyers instruct the witnesses not to answer questions or
15 there's some other failure on the part of Facebook that requires,
16 you know, the depositions to be taken yet again.

17 Why do we need to talk about anything else relating to the
18 30(b)(6) depositions at this point?

19 **MS. RING:** I'll take my cue from you and stop.

20 **THE COURT:** Okay.

21 **MS. RING:** I was just --

22 **THE COURT:** So --

23 **MS. RING:** Well, actually, I'm sorry. I do think this is
24 important to address. I was trying to account for the
25 circumstance where if there are, believe it or not, Your Honor,

1 situations where plaintiffs are asking for something that we
2 don't think is covered by the topic.

3 So plaintiffs will say then we have not finished all the
4 30(b)(6)s because they want a witness on X, and we say X is not
5 covered by the topic. So our view in that case would be we are
6 done, and plaintiffs' view is we are not done. So --

7 **THE COURT:** And that needs to be addressed by this Special
8 Master and then if --

9 **MS. RING:** Agreed.

10 **THE COURT:** -- he rules and you disagree, appeal it to me.

11 **MS. RING:** Agreed. Thank you.

12 **MR. LOESER:** The process.

13 Okay. Your Honor, I am at my last issue, which --

14 **THE COURT:** Okay.

15 **MR. LOESER:** -- (indiscernible) here, and that is documents
16 pertaining to financial information. We got a --

17 **THE COURT:** Documents pertaining to what?

18 **MR. LOESER:** Financial information.

19 **THE COURT:** Oh, yeah.

20 **MR. LOESER:** Damages information.

21 We had this as an odyssey to get this information. We are
22 finally starting to receive some information about revenue that
23 relates to matters at issue in the case claims, for example,
24 revenue obtained by Facebook as a result of whitelisting certain
25 plaintiffs.

1 We have tried for -- we heard all kinds of reasons why the
2 information didn't exist or it wasn't relevant. And, finally, in
3 April, Facebook agreed to go back and search a series of non-
4 custodial sources for this information, which we're thankful that
5 we're finally getting some information. But the production is
6 not complete, and it needs to be complete. And it should be
7 completed by July 15th.

8 It's just we've waited long enough. I think Facebook should
9 be able to provide that. And before anyone speaks, I notice
10 there's one other document issue that we can group with this,
11 which is the VPPA documents -- the Video Privacy Protection Act
12 claims that I do want to briefly address because Ms. Ring
13 mentioned it.

14 And so with the Court's permission, I'll address that, and
15 then Ms. Rose can -- Ms. Ring can perhaps respond to both of
16 those.

17 **THE COURT:** Go ahead.

18 **MR. LOESER:** So we served discovery requests that included
19 VPPA information in November of 2019. There was a process with
20 Judge Corley which I'm sure was torture for all involved on
21 search terms relating to those requests. As often is the case,
22 in a case when you get information, we eventually served
23 additional requests that related to and called for certain VPPA
24 information. We did that in August of 2021.

25 Facebook recently -- nothing happened with those requests

1 for a long time. Facebook recently proposed additional
2 custodians and search terms. So this was a Facebook proposal for
3 additional custodians and search terms to provide the information
4 called for by those requests. That process has gone back and
5 forth for the parties discussing that, and this is just simply
6 another area of discovery.

7 These requests, obviously, call for relevant information.
8 It's information we don't yet have, and it's information that
9 Facebook has. We just need a deadline. And so we would like
10 that discovery completed by June 20th.

11 So now I am truly at the end of my list.

12 **THE COURT:** So you want the VP -- you want me to order the
13 VPPA documents produced by June 20?

14 **MR. LOESER:** Yes. And I should say -

15 **THE COURT:** And --

16 **MR. LOESER:** -- that the reason why I gave you that date was
17 that originally that deposition we wanted it done by -- the
18 deposition by June 30th. So if the deposition is happening on
19 July 21st, I suppose that to be fair to Facebook, they could
20 perhaps have another week or two to complete the document
21 production relating to that deposition.

22 **THE COURT:** Okay. So, sorry, VPPA documents produced by
23 June 20 and then you said financial information to be produced by
24 when?

25 **MR. LOESER:** July 15th. And we can say given when the VPPA

1 deposition will not occur, for both of those things completed by
2 July 15th.

3 **THE COURT:** For both of those things July 15th?

4 **MR. LOESER:** Yeah.

5 **THE COURT:** So not June 20th? I'm confused.

6 **MR. LOESER:** I'm confused, too, at this point.

7 Let's -- it really depends on when the deposition --

8 **MS. RING:** Let me try to clear it up.

9 **MR. LOESER:** It's when the deposition is going to happen.

10 So if the VPPA deposition is happening on July 21st, it would be
11 nice to have those documents three weeks before the deposition.
12 So whatever date that is, we want those documents.

13 **THE COURT:** July 1st.

14 **MR. LOESER:** July 1st, it is.

15 **MS. RING:** Can I get to address that before it's a deadline?

16 **THE COURT:** Sure.

17 **MS. RING:** Thank you.

18 So I'll start with the VPPA documents. And I think I
19 described already there was a process with Judge Corley. I
20 understand Mr. Loeser is saying now we learn things through
21 documents and then we can serve more discovery requests. Of
22 course, that's true.

23 But Facebook had produced 35,000 video-related documents
24 before -- you know, it has already produced 35,000 video-related
25 documents. These additional requests and to hear now Mr. Loeser

1 say -- I mean I don't know if plaintiffs are now suggesting they
2 don't want these additional custodians and search terms because
3 that is the cause of the delay.

4 **MR. LOESER:** Oh, we do.

5 **MS. RING:** They are hitting on hundreds of thousands of
6 documents that, again, to avoid any further disputes, we just
7 agreed to do. And it's not true to say we -- we objected as
8 saying this goes beyond what Judge Corley ruled.

9 **THE COURT:** I don't think --

10 **MS. RING:** We sent a lot of --

11 **THE COURT:** I don't think you're doing a good job of
12 avoiding further disputes because we're sitting here disputing
13 everything but go on.

14 **MS. RING:** Well, no. We are -- we're not doing it fast
15 enough. We're agreeing to everything. They're just -- notice,
16 Judge, they're just asking you for dates. They're not asking --
17 we're doing it. We're agreeing, and I'm just telling you what's
18 humanly possible.

19 And so we are now getting hundreds of thousands of more
20 video documents which we could have stood on our objections, but
21 we didn't. I mean the reality is, look, the team -- you know,
22 with this many documents to review, I understand they need them
23 in advance of the deposition and that is indeed why we're into
24 July now is because of these documents and our agreement to
25 produce them.

1 But I think we need at least until -- and, again, we're
2 negotiating dates for this video deposition. And if we have
3 until the 21st, I think if they get them a couple of weeks in
4 advance, I mean we are -- to have 1,000 lawyers reviewing
5 documents to try to give them everything they want, it's been a
6 huge lift.

7 And I think, you know, to say two weeks before that video
8 deposition really ought to be enough time. They already have
9 35,000 video documents.

10 **THE COURT:** July 6th.

11 **MS. RING:** Okay. Thank you.

12 **MR. LOESER:** Your Honor, every time I hear about 900 or
13 1,000 lawyers, I realize why this case feels like when my car got
14 t-boned.

15 **THE COURT:** When your car what?

16 **MS. RING:** I don't get it.

17 **MR. LOESER:** I was at a stop light a couple of years ago and
18 someone drove into the side of my car. And every time I hear
19 about 1,000 lawyers working on this case for Facebook, it reminds
20 me of the feeling of having my car get hit by another car.

21 I can't believe -- if there are really 1,000 lawyers working
22 on this case, that's -- if only the plaintiffs had 1,000 lawyers
23 working on their case.

24 **MS. RING:** They're document reviewers, Derek, and that's
25 what it takes.

1 **THE COURT:** Maybe we should have them all -- should we have
2 them all appear at the next case management conference?

3 **MS. RING:** No.

4 **MR. LOESER:** A lot have been asking, Your Honor.

5 **MS. WEAVER:** One wonders if the number of lawyers compared
6 to the number of documents the plaintiffs are getting, I think
7 maybe was the point, but that's fine.

8 **THE COURT:** Okay. So are we done?

9 **MS. WEAVER:** Your Honor, I did want to address the deadline
10 on the financial documents because we do -- that is something
11 that we've teed up. And I can't remember, honestly, what Mr.
12 Loeser asked for.

13 We do have a deposition coming up, another 30 -- you know, a
14 followup on the 30(b)(6) on these categories that were not
15 covered. So what was the deadline that Your Honor wrote down for
16 the financial documents?

17 **MR. LOESER:** I believe it was July 15th.

18 **MS. WEAVER:** That is a little late.

19 **MR. LOESER:** That's too late?

20 **MS. WEAVER:** Sorry.

21 **THE COURT:** I don't think -- that's what Mr. Loeser asked
22 for, but in the case management statement, you asked for July
23 1st.

24 **MS. WEAVER:** That would be more helpful, I think, Your
25 Honor. July 1st.

1 **MR. LOESER:** I revise my request.

2 **THE COURT:** Okay. Financial documents have to be turned
3 over by July 1st.

4 **MR. LOESER:** Your Honor, that is the end of my list. I
5 think I would be remiss not to say that I appreciate the Court's
6 attention to this. I also want to express my appreciation for
7 the discovery mediator and for Special Master Garrie who have
8 worked tirelessly through a number of issues.

9 We really wanted the Court to see that tracker so the Court
10 could see and have a record of the work that the parties are
11 doing and the number of disputes that are being addressed; not
12 all of them resulting in conflict, some of them being resolved.
13 But extraordinary efforts by both the mediator and Special Master
14 Garrie -- Judge Ander and Special Master Garrie. And we really
15 appreciate those efforts, as well, even though --

16 **THE COURT:** And --

17 **MR. LOESER:** -- we had to pay for it.

18 **THE COURT:** When should we meet again? When should we have
19 another status conference so that I can set more production
20 deadlines?

21 **MR. LOESER:** Well, what was the interval between this one
22 and the last one? Six weeks?

23 **THE COURT:** Not long enough.

24 **MR. LOESER:** Yeah. Why don't we say a month?

25 **MS. RING:** I'm not sure we -- I think it was -- the last one

1 was the end of March, so April, May -- I mean like ten -- two and
2 a half months. Maybe another -- maybe two months.

3 **MR. LOESER:** I suggest six --

4 **MS. RING:** Well --

5 **MS. WEAVER:** I actually propose like the third week in July
6 so we can see if these other deadlines were complied with and how
7 things have worked out.

8 **THE COURT:** Yeah, that's probably -- well, I was going to
9 suggest the 14th just based on my schedule because I'm not
10 available the following week.

11 **MR. LOESER:** July 14th sounds good to the plaintiffs.

12 **MS. RING:** Your Honor, the amount of effort that -- I mean
13 to go back and forth in the middle of trying to finish these
14 30(b)(6) depositions, I'm sure you'll hear about it if there's a
15 problem. And there is not going to be a problem.

16 I just -- this is -- I don't think this is helpful to the
17 process, but we don't oppose it. I think we could just --

18 **THE COURT:** What about like -- I understand what you're
19 saying about, you know, the problem with having to do this during
20 the -- you know, as you're trying to wrap up these productions
21 and the 30(b)(6) depositions and stuff. So, you know, what about
22 like August 4th?

23 **MS. RING:** That works for us. And we can report to you that
24 --

25 **MR. LOESER:** Unfortunately --

1 **MS. RING:** -- we're all done.

2 **MR. LOESER:** -- we have -- unfortunately, I may not be in
3 the country. If we could do it before July 28th, that would be
4 -- maybe the 27th of July or sometime that week if acceptable.

5 **THE COURT:** How about the 26th?

6 **MR. LOESER:** Perfect. I say that for myself. I guess
7 others should probably pipe in if it works for them.

8 **MS. WEAVER:** That's fine here.

9 **THE COURT:** 26th at like, you know, 1 p.m.

10 **MR. LOESER:** Okay.

11 **THE COURT:** Okay.

12 **MS. RING:** Yes, Your Honor.

13 **MR. LOESER:** That will be our next status conference.

14 And just to be -- I want to make sure we are totally clear
15 and haven't had any miscommunications. The 30(b)(6) depositions
16 where the people -- you know, people like Ms. Hendricks who
17 didn't -- you know, refused to answer questions and stuff like
18 that or maybe they weren't adequately prepared on topics or the
19 plaintiffs believe they weren't adequately prepared on topics,
20 the order is that those need to be completed by the end of June,
21 redone by the end of June, as well.

22 **MS. RING:** Yes, Your Honor.

23 **THE COURT:** Okay. All right. Very good. We'll see you
24 next time.

25 **MR. LOESER:** Thank you for your patience, Your Honor.

1 **MS. RING:** Thank you, Your Honor.

2 (Proceedings adjourned at 4:02 p.m.)

3 ---000---

4
5
6
7
8
9
10
11
12
13
14
15 **C E R T I F I C A T E**

16 I certify that the foregoing is a correct transcript from
17 the official electronic sound recording of the proceedings in the
18 above-entitled matter.

19
20
21 
22 _____

23 DIPTI PATEL, CET-997

24 LIBERTY TRANSCRIPTS

25 Date: June 11, 2022